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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,469	07/14/2000	Michael P. Lyle	RECOP004	6458
21912	7590	05/20/2005	EXAMINER	
VAN PELT, YI & JAMES LLP		HENEGHAN, MATTHEW E		
10050 N. FOOTHILL BLVD #200		ART UNIT		PAPER NUMBER
CUPERTINO, CA 95014		2134		

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/616,469	LYLE ET AL.	
	Examiner	Art Unit	
	Matthew Heneghan	2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 March 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-7 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 08 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/11/05.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-7 have been examined.

***Information Disclosure Statement***

2. The Information Disclosure Statement filed 11 March 2005 has been fully considered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Details about what would specifically constitute a "packet that would be sent if the connectionless port were not in use," critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Applicant discloses that an ICMP packet may be used, but does not specify which types of ICMP packets would be suitable.

The ICMP protocol comprises several dozen types of different messages, each having a different sub-code and a unique meaning. Some, but not all, of the known messages have meanings that might be appropriate in the context of the instant invention. Though it is clear that the invention could use a known sub-code when generating an ICMP message, the functionality described in the instant application does not clearly conform to any one of the well-known definitions for the ICMP functions; therefore, it is necessary for the specification to designate a particular sub-code within ICMP in order for the disclosure to be enabling. Undue experimentation would be required in order to implement a system having this functionality using Applicant's specification.

Given that the nature of the invention is that it is computer networking equipment in communication with external computers using industry standard protocols, the breadth of claim 1 is such that any message that would signify a port not being in use would satisfy the limitation; no message type was found in any protocol or in any prior art or working examples that would be compatible with Applicant's invention fits this definition; moreover, since this uses standardized implementations, one of ordinary skill in the art cannot be expected to use existing sub-codes for roles that do not necessarily apply to their standard definitions, or to create new sub-codes.

***Response to Amendment***

4. The affidavit under 37 CFR 1.132 filed 7 March 2005 is insufficient to overcome the rejection of claims 1-7 based upon 35 U.S.C. 112, first paragraph as set forth in the last Office action because: It states that one skilled in the art at the time the invention was made would have recognized that the specific message signifying a port not in use would be ICMP type 3, code 3; however, there is no factual evidence cited in the declaration to support the opinion presented. It is further noted that the declarer, Brian Hernacki, is an employee of the assignee and no declaration has been made as to the relationship of Mr. Hernacki to the inventors or the invention. See MPEP §716.01(c).

***Response to Arguments***

5. Applicant's arguments, see Remarks, p. 2, filed 7 March 2005, with respect to the rejections under 35 U.S.C. 112, first paragraph have been fully considered but they are not persuasive, for the reasons discussed above.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Heneghan, whose telephone number is (571) 272-3834. The examiner can normally be reached on Monday-Friday from 8:30 AM - 4:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse, can be reached at (571) 272-3838.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Or faxed to:**

(703) 872-9306

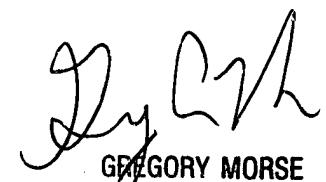
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.  
For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MEH, *MH*

May 16, 2005



GREGORY MORSE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100